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Letter dated 31 October 2005 from the Permanent Representative of Andorra to the United Nations addressed to the Chairman of the Committee

At the request of my Government, I have the honour to transmit to you the second report to be submitted by the Principality of Andorra to the Security Council Committee established pursuant to resolution 1540 (2004) (see annex).

My Government will be happy to provide the Committee with such additional information as it considers necessary.

I should be grateful if you would arrange for the text of the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Julian **Vila-Coma**
Ambassador
Permanent Representative

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Annex to the letter dated 31 October 2005 from the Permanent Representative of Andorra to the United Nations addressed to the Chairman of the Committee

[Original: French]

The principality of Andorra has never allowed the development in its territory of any activity or industry linked to the use of nuclear, chemical and biological products. Andorra does not produce, develop, market, buy, possess, use or have stocks of chemical, biological or nuclear weapons, their delivery systems, or related products and does not possess obsolete chemical, biological or nuclear weapons.

The Principality of Andorra nevertheless has laws and regulations to prevent the establishment in Andorra of industries related to the use of nuclear, chemical or biological products and penalize any violation of these rules and of the international rules on the subject.

At the international level, the Government recently approved the accession of Andorra to the Convention on the Physical Protection of Nuclear Material. Domestic procedures require the Parliament of Andorra to approve this accession. The instrument of accession should be deposited shortly.

With regard to the International Atomic Energy Agency (IAEA), in accordance with article III of the Treaty on the Non-Proliferation of Nuclear Weapons, "Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices." Andorra has signed and is about to ratify the relevant safeguards agreement in the context of the Treaty on the Non-Proliferation of Nuclear Weapons.

Andorra nevertheless does not intend to become a member of the Agency, given that there is no industry in its territory related to the activities of IAEA.

As regards domestic legislation, on 21 February 2005 the Parliament of Andorra adopted the text of a new Penal Code, which entered into force on 23 September 2005. The new Code takes into account all the penal provisions contained in the counter-terrorism conventions and other treaties currently in force and in particular strengthens criminal penalties in the context of efforts to combat the proliferation of nuclear, chemical and biological weapons.

In the area of biological and chemical weapons, article 127 of the new Penal Code criminalizes the use of genetic technology to produce biological weapons. Any attempt or conspiracy to engage in such use is likewise criminalized. Article 266 punishes the trafficking and stockpiling of chemical and biological weapons:

> "1. The production, development, marketing, possession, transfer or stockpiling of chemical or biological weapons or related munitions shall be punished by imprisonment for 6 to 12 years.

2. Possession of more than one of any such weapons or munitions, even if disassembled, shall be considered as stockpiling of chemical or biological weapons; holding of any weapon or munition, even if disassembled, shall be considered as possession. Marketing shall include acquisition as well as sale, import or export.

3. Any research or study of a scientific or technical nature aimed at the creation of a new chemical weapon or the modification of an existing weapon shall be considered as development of chemical or biological weapons.

4. Any weapon so defined by the international treaties and conventions to which Andorra is a party shall be considered as a chemical or biological weapon.

5. Any person using chemical or biological weapons or initiating military preparations for that purpose shall be punished by imprisonment for 15 to 20 years, without prejudice to penalties which may be imposed pursuant to other provisions of the Code.

6. Attempts to commit such offences shall be punishable."

Article 23 of the Penal Code deals with complicity. An accomplice is an individual who is not the perpetrator of a crime but who knowingly cooperates in the execution of the criminal act by prior or simultaneous actions. Prior or simultaneous acts or omissions designed to knowingly assist the perpetrator(s) of the offence are punished as complicity, unless they themselves constitute a separate offence punishable by a more severe penalty.

Article 2 of the Decree of 3 July 1989 on the possession, use and circulation of weapons prohibits the production, import, circulation, possession, use, purchase, sale and advertising of certain weapons, including weapons of war (weapons, vehicles, equipment and materials of all types and their basic parts, as well as munitions, designed or intended for warfare or for exclusively military uses).

Article 265 of the new Penal Code also prohibits the production, development, marketing, transfer or stockpiling of weapons of war or their munitions, which activities are punishable by imprisonment for four to six years. Attempts to commit such offences are also punishable. Possession of more than one such weapon or munition, regardless of model or category, even when disassembled, is considered as stockpiling of weapons of war. Possession of a single weapon of war is punishable as possession of a prohibited firearm. Marketing includes acquisition, sale, import or export.

Any weapon so defined in the relevant statutory provisions (see paragraph above) is considered to be a weapon of war.

As regards the financing of weapons production activities, and in the context of the campaign against terrorist groups, article 336 (2) of the new Penal Code criminalizes the provision and receipt of money and in general any other equally serious form of economic or other cooperation, assistance or mediation in the activities of a terrorist group.

Article 262 of the new Penal Code criminalizes violations of safety standards posing a specific threat to persons. An individual who, when producing, handling,

transporting, possessing or marketing materials, residues, devices, organisms or hazardous substances, violates established safety standards and endangers the life or health of persons is liable to up to two years' imprisonment.

Although the Principality of Andorra is not a producer of chemical or biological weapons, its legislators have endeavoured to close any legal loopholes which might allow a natural or legal person to handle such products in total secrecy, for example by promulgating the Act on Industrial Safety and Quality of 22 June 2000.

That Act seeks to prevent and limit risks and establish effective safeguards against incidents or accidents which may occur during an industrial activity and which could endanger the life of persons or cause damage to facilities. Safety procedures must be followed at all stages of industrial activity, from production to use, including the storage and transport of industrial products, in accordance with article 6 of the Act.

This general Act is complemented by regulations relating to the safety provisions of the Act. The Regulation concerning explosive substances of 4 May 1976, amended a number of times, most recently on 5 October 1995, establishes the legal framework governing the conservation, sale, import and use of explosive substances employed in Andorra for the construction of tunnels and buildings and avalanche provocation.

With regard to the physical protection of facilities and materials, the Act on Industrial Safety and Quality contains provisions for the prevention and limitation of risks such as fire, explosion or any other event that may cause burns. Industrial facilities and products, as well as their use and functioning, must meet the requirements set out in the Act or be subject to a fine or temporary or permanent closure of the facility.

The safety of facilities is monitored by the competent ministry, which may itself or through monitoring bodies, at the request of any interested individual or ex officio, undertake an inspection at any time to ensure that safety procedures are being followed (article 11 of the Act). These monitoring bodies, also called inspection and monitoring enterprises, are public or private entities possessing juridical personality and are required to have the human and material resources, as well as the essential impartiality, for such activities.

Those responsible for industrial activities are required to submit for the Register of Industrial Activities maintained in the Department of Commerce of the Government of Andorra information concerning the type of activities conducted and their location, in order to facilitate the provision of information about industrial activity to the public. Non-compliance with that obligation is considered as negligence and punished by a fine of 600 euros. Refusal to cooperate with experts or inspectors from the Government or the monitoring bodies is likewise considered as negligence.

The Act lists a series of behaviours or omissions which could pose a risk to the facilities or materials contained therein and which are considered as serious negligence and are punished by a fine of between 600 and 6,000 euros: firstly, the production, import, sale, transport or use of products and elements in violation of industrial safety standards (article 23a), or the start-up of facilities without due authorization, if such authorization is required pursuant to the relevant regulations

(article 23b); secondly, concealment of information or provision of false information for the Register of Activities or repeated and undue delays in providing information (article 23c), failure to provide the Government with information requested (article 23d) and issuance of certificates or reports containing false information (article 23e); and, lastly, inadequate maintenance of facilities which could pose a risk to persons (article 23i).

Pursuant to article 24 of the Act, if any of the behaviours described above expose persons to very serious and imminent danger or cause serious injury, they are considered as very serious offences punished by a fine of between 6,000 and 60,000 euros.

Article 4 of the Act on Industrial Safety and Quality deals with industrial promotion programmes. The Government may adopt programmes to promote the expansion, development, modernization and competitiveness of industry or to improve the technical level of enterprises and develop services. Promotion and modernization programmes are implemented by the Government and the bodies designated by it to improve the professional and technical skills of staff in order to help enterprises adapt rapidly to technological advances.

The Sensitive Materials Control Act defines all the requirements which must be followed by all those who work with goods considered to be sensitive, and their responsibilities, including with regard to all commercial activities: production, import, distribution, retailing, transport or storage. Persons involved in such activities must have a licence to work with sensitive goods and articles 3 and 4 specify who may apply for such a licence and indicate the information to be given in the licence, for example the list of facilities authorized to handle sensitive goods. Such activities must be documented in a record of invoices issued and received as well as inventory lists, in order to ensure the greatest possible transparency in all the above-mentioned operations, as set out in articles 5 and 6 of the Act.

According to article 2 of the Act, all persons working with sensitive goods, defined as natural or legal persons involved in operations such as production, processing, import, export, distribution, commerce, transport and storage of such goods must at the request of the Finance Ministry submit the records and all supporting documentation regarding those records and any economic operations transacted with third parties. The operator must also retain all such documents for a period of five years (article 8). Non-compliance with any of the above obligations is penalized by a fine, without prejudice to possible criminal penalties in certain cases. The fine varies from 3,000 euros for less serious offences to 300,000 euros for the most serious offences.

The Transportation and Energy Service of the Government of Andorra is the national authority responsible for the Chemical Weapons Convention and is therefore the authority competent to provide declarations to the Organization for the Prohibition of Chemical Weapons (OPCW) with regard to chemicals listed in Schedules 1, 2 and 3 of the Chemical Weapons Convention.

As is the case for chemical and biological weapons, Andorra does not produce or purchase nuclear weapons or in fact any nuclear products. The Sensitive Materials Control Act and the Act on Industrial Safety and Quality would also apply to cases where a natural or legal person is handling nuclear products.

The new Penal Code does, however, include two chapters dealing with nuclear energy and major damage. They contain a total of nine articles, which penalize:

- Illicit possession of nuclear material or radioactive products;
- Import, export, transport or stockpiling;
- Exposure of individuals to ionizing radiation;
- Disruption of establishments, facilities or services where radioactive products or nuclear material may be used;
- Loss or emission of radiation through negligence;
- Damage caused by negligence placement or shipping of explosives;
- As for chemicals or biological products, non-compliance with safety standards presenting a real risk of danger to persons is likewise criminalized.

Lastly, TEDAX (Techniciens pour le désamorçage des engins explosifs — explosive ordnance disposal (EOD) experts), a branch of the Andorran police, is the competent unit for matters involving explosives. This unit prepares contingency plans for incidents involving, for example, anthrax. Some members of TEDAX have also received specialized NR/NBC (nuclear radiation and nuclear, bacteriological and chemical toxins) training in the disarming and neutralization of nuclear, biological and chemical products or weapons and the preparation of contingency plans for such incidents. The remaining members of the unit should receive the same training in 2006.